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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 PROTECTIVE LIFE INSURANCE
11 COMPANY,

12 Plaintiff,

13 vs.

14 ANA BERTA ALVAREZ, et al.,

15 Defendants.
16

CASE NO. 12-CV-1749-MMA-DHB

**ORDER GRANTING MOTION
FOR DEFAULT JUDGMENT
AND RELEASE OF LIFE
INSURANCE PROCEEDS**

[Doc. No. 31]

17 This matter is now before the Court on Defendant Theresa Hawkins'¹ Motion
18 for Default Judgment. [Doc. No. 31.] For the following reasons, the Court
19 **GRANTS** the motion.

20 **DISCUSSION**

21 “The general rule of law is that upon default the factual allegations of the
22 complaint, except those relating to the amount of damages, will be taken as true.”
23 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (quoting
24 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977)). However, a party
25 who obtains an entry of default is not entitled to default judgment as a matter of
26 right. *See Warner Bros. Entm’t Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1071 (C.D.
27

28 ¹All references to Theresa Hawkins in this Order relate to her as the Administrator of the Estate of David Alvarez.

1 Cal. 2004). Default judgments are disfavored; cases should be decided on the merits
2 if possible. *See In re Roxford Foods, Inc.*, 12 F.3d 875, 879 (9th Cir. 1993). Thus,
3 “any doubts as to the propriety of a default are usually resolved against the party
4 seeking a default judgment.” *VonGrabe v. Sprint PCS*, 312 F. Supp. 2d 1313, 1319
5 (S.D. Cal. 2004) (citing *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th
6 Cir. 1985)).

7 In determining whether to grant default judgment, the Court considers the
8 following factors: (1) the possibility of prejudice to the moving party, (2) the merits
9 of the moving party’s substantive claim, (3) the sufficiency of the moving party’s
10 claims, (4) the sum of money at stake in the action, (5) the possibility of a dispute
11 concerning material facts, (6) whether the default was due to excusable neglect, and
12 (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
13 decisions on the merits. *Warner Bros.*, 346 F. Supp. 2d at 1071-72 (quoting *Eitel v.*
14 *McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986)).

15 Here, the Court finds that the majority of the factors weigh in favor of
16 granting Hawkins’ motion for default judgment against the absent Defendants. First,
17 Defendant Hawkins has properly litigated her claim and will be prejudiced if the
18 entry of judgment is delayed. The Court also finds that Defendant Hawkins’ Answer
19 sufficiently alleges substantive claims which concern a significant amount of money.
20 Further, in light of the fact that Defendants Ana Berta Alvarez and Monica Figueroa
21 (individually and as Administrator of the Estate of Teresa Cabrales Alvarez) have
22 not appeared in this case, there is no possibility of a dispute over the material facts
23 and there is no indication that the default was due to their excusable neglect. This
24 Court therefore finds that factors (1) through (6) weigh in favor of granting
25 Hawkins’ motion. The only factor that weighs against granting the motion is the
26 strong policy favoring decisions on the merits. Having considered all of the relevant
27 factors, this Court determines that default judgment in favor of Defendant Hawkins
28 is warranted.

CONCLUSION AND ORDER

Based on the foregoing,

IT IS HEREBY ORDERED THAT:

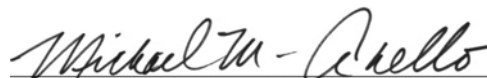
(1) Default Judgment is entered against Defendants Ana Berta Alvarez, Monica Figueroa, and Monica Figueroa as Administrator of the Estate of Teresa Cabrales Alvarez, and in favor of Theresa Hawkins as Administrator of the Estate of David Alvarez. The Court finds that Theresa Hawkins as Administrator of the Estate of David Alvarez is entitled to all proceeds of the life insurance policy pertaining to decedent David Alvarez in this action, and on deposit with this Court in this action.

(2) On or about July 17, 2012, Plaintiff deposited with the Clerk of Court the sum of **\$103,821.92**, which represented the face value of the life insurance policy plus interest. [Doc. No. 4.] On February 11, 2013, the Court discharged Plaintiff Protective Life Insurance Company, and awarded Plaintiff \$6,160.76 in costs and reasonable attorney fees. [Doc. No. 27.] The Clerk of Court shall release the remaining **\$97,661.16**, including all interest, to Defendant Theresa Hawkins as Administrator of the Estate of David Alvarez.

(3) The Clerk of Court shall enter final judgment accordingly and terminate this case.

IT IS SO ORDERED.

DATED: March 21, 2013



Hon. Michael M. Anello
United States District Judge